REMARKS

Claims 143-147 and 149-160 were pending in the application. Claims 145, 147, 149 and 154 have been amended herein. Claims 146 has been cancelled herein, without prejudice. Claims 143-144, 148, and 155-160 have been withdrawn by the Examiner as being drawn to a non-elected invention, thus, Applicants have canceled claims 143-144, 148, and 155-160 herein. Upon entry of the present amendment, claims 145, 147 and 149-154 will be pending. No new matter has been added.

Amendment or cancellation of claims should not be construed as an acquiescence, narrowing, or surrender of any subject matter. The amendments are being made not only to point out with particularity and to claim the present invention, but also to expedite prosecution of the present application. Applicants reserve the right to prosecute the originally filed claims further, or similar ones, in the instant or subsequently filed patent applications.

Priority

The Examiner has acknowledged that the instant specification is entitled to priority to USSN 09/249,011 for combining immunoglobulins specific to B7-1 and B7-2 for treating transplant recipients with certain immunosuppressive agents (see Office Action mailed April 10, 2006), as claimed in claim 145 of the instant application. In the Office Action mailed June 25, 2007, the Examiner contends that

> [USSN 09/249,011] … does not provide sufficient written description of the newly amended claim limitation 'wherein an inhibitor of CD40 or CD40 ligand is not administered to the transplant recipient'…The instant claims now recite limitations which were not clearly disclosed in the priority applications as well as the specification as filed, and would have changed the scope of the priority applications and do change the scope of the instant disclosure as-filed.

Applicants traverse the foregoing and respectfully point out that that USSN 09/249,011 (US Patent No. 6,972,125) contains numerous teachings of the utilization of B7-1 and B7-2 antibodies without inhibitors of CD40 or CD40 ligand. In particular, Applicants direct the Examiner to Examples 8-11 and Figures 8-9, all of which demonstrate the use of B7-1 and B7-2

antibodies without inhibitors of CD40 or CD40 ligand. Applicants respectfully remind the Examiner that a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a *prima facie* case for lack of descriptive support. *Ex parte Parks*, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993), MPEP 213.05(i).

Further, in contrast to the Examiner's contention, support for the use of B7-1 and B7-2 antibodies without inhibitors of CD40 or CD40 ligand may also be found in the instant specification, in Examples 16-23, and Figures 18-23 and 26-28. Reconsideration and withdrawal of this rejection, as it applies to claim 145, is respectfully requested.

In an effort to expedite prosecution, and for examination purposes only, Applicants rely on the filing date of the instant application for the remaining claims. Applicants reserve the right to establish the benefit of an earlier priority date for these claims at a later time.

The Examiner subsequently contends:

> Further, neither the priority applications nor the instant application have provides *(sic)* a sufficient description of a representative number of species of 'inhibitors of CD40 or CD40 ligand' to represent the entire genus of 'inhibitors of CD40 or CD40 ligand', broadly encompassed by the current claims.

Applicants traverse and respectfully point out that molecules inhibiting the CD40/CD40 ligand costimulatory interaction were well-known in the art at the time of filing. For example, de Boer et al. (US Patent No. 5,677,165; issued October 14, 1997) and Armitage et al. (US Patent No. 5,961,974; issued October 5, 1999) each demonstrate that antibody-based inhibition of the CD40/CD40 ligand interaction was generally known at the time the instant application was filed. In addition, inhibition of the CD40/CD40 ligand interaction via other methods, such as the use of soluble CD40 fusion proteins (Gray et al., J Exp Med, 1994, 180: 141), were well known in the art at the time of filing. Applicants have amended claims 145 and 154 to recite lack of inhibition of the "costimulatory interaction" between CD40/CD40 ligand.

In light of these amendments and the aforementioned disclosures in the art at the time of filing, Applicants respectfully request reconsideration and withdrawal of this rejection.

Rejection of Claims 145-147 and 149-154 Under 35 U.S.C. § 112, First Paragraph

The Examiner has rejected claims 145-147 and 149-154 under 35 U.S.C. § 112, for lack of written description, for allegedly not providing support for the claim language "wherein an inhibitor of CD40 or CD40 ligand is not administered to the transplant recipient." Applicants have amended claims 145 and 154 to recite lack of inhibition of the "costimulatory interaction" between CD40 and CD40 ligand.

Applicants also respectfully point out that the instant specification contains numerous examples of the administration of B7-1 and B7-2 antibodies in the absence of an inhibitor of the costimulatory interaction between CD40 and CD40 ligand. Applicants direct the Examiner to Examples 16-23, and Figures 16-23 and 26-28 of the instant specification, all of which demonstrate the use of B7-1 and B7-2 antibodies without inhibitors of the costimulatory interaction between CD40 and CD40 ligand. In particular, Applicants point out that Example 22 of the instant specification discloses the use of B7-1 and B7-2 antibodies alone and in combination with several other immunosuppressive agents, such as cyclosporin A, rapamycin, and steroids, but not inhibitors of costimulatory interactions between CD40 and CD40 ligand. Applicant respectfully remind the Examiner that a lack of literal basis in the specification for a negative limitation may not be sufficient to establish a *prima facie* case for lack of descriptive support. *Ex parte Parks*, 30 USPQ2d 1234, 1236 (Bd. Pat. App. & Inter. 1993), MPEP 213.05(i).

Furthermore, as stated above, molecules inhibiting the CD40 - CD40 ligand costimulatory interaction were well-known in the art at the time of filing (see de Boer et al., US Patent No. 5,677,165, issued October 14, 1997; Armitage et al., US Patent No. 5,961,974, issued October 5, 1999; Gray et al., J Exp Med, 1994, 180: 141).

In light of the amendment of claims 145 and 154, the written description available in the instant specification, and the aforementioned disclosures of methods of inhibiting CD40 - CD40 ligand interactions available in the art at the time of filing, Applicants respectfully request reconsideration and withdrawal of these rejections.

Rejection of Claims 145-147 and 154 Under 35 U.S.C. § 102(e)

The Examiner has rejected claims 145-147 and 154 under 35 U.S.C. § 102(e) as allegedly being anticipated by Freeman et al. (US Patent No. 6,605,279).

As the Examiner is aware, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

Applicants traverse and respectfully point out that Freeman et al. does not teach each and every element of the instant claims. In the interest of expediting prosecution and in no way conceding the validity of the rejection, Applicants have amended claims 145 and 147, thereby rendering the foregoing rejection moot.

Applicants respectfully request reconsideration and withdrawal of these rejections.

Rejection of Claims 145-147 and 149-154 Under 35 U.S.C. § 103(a)

The Examiner has rejected claims 145-147 and 149-154 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Freeman et al. in view of de Boer et al.

Applicants traverse the rejection and submit that Freeman et al. and Boer et al. fail to teach or suggest the claimed invention. In the interest of expediting prosecution and in no way conceding to the validity of the rejection, however, Applicants have amended claims 145 and 147.

In view of the foregoing, Applicants respectfully request reconsideration and withdrawal of the rejection.

CONCLUSION

In view of the foregoing amendments and remarks, Applicants submit that the pending claims are in condition for allowance. Early and favorable consideration of the application is respectfully solicited. The Examiner may address any questions raised by this submission to the undersigned at (617) 832-1264. If any fees are due, the Commissioner is hereby authorized to credit any overpayment or charge any deficiencies to Deposit Account No. **Deposit Account No. 06-1448, WYS-004.01.**

Respectfully submitted,

Foley Hoag LLP

Dated: September 25, 2007

Customer No: 58571
Patent Department
Foley Hoag, LLP
155 Seaport Blvd.
Boston, MA 02210-2600

/DeAnn F. Smith/
DeAnn F. Smith, Esq.
Reg. No. 36,683
Attorney for Applicants